DATO' SHAZRYL ESKAY ABDULLAH A

v.

MERONG MAHAWANGSA SDN BHD & ANOR (NO 3)

HIGH COURT MALAYA, KUALA LUMPUR B
VT SINGHAM J
[CIVIL SUIT NO: S22-16-2002]
5 MAY 2011

CONTRACT: *Illegality - Opposed to public policy - Plaintiff assisting* C
defendants in obtaining a government project through the plaintiff's political and government influence - Whether agreement to pay for plaintiff's services opposed to public policy and consequently illegal - Whether consideration and object of agreement was inimical or tainted with illegality or harmful to public welfare - Bare assertion agreement opposed D
to public policy - Whether insufficient - Contracts Act 1950 s. 24(e)

CONTRACT: *Privity - Letter of undertaking - Whether letter of undertaking signed by director of company also signed on director's personal behalf - Whether director could disclaim liability on his personal* E
capacity

CONTRACT: *Terms - Construction of - Entire Agreement Clause - Scope and nature of - Defendants issuing letter of undertaking to remunerate plaintiff for services rendered - Whether letter of undertaking* F
when read in its entirety prevented plaintiff from claiming remuneration

Sometime in 1998 there was a proposal to build a new bridge to replace the causeway between Johor and Singapore (the original bridge project). The second defendant approached the plaintiff to assist his company IBEX Corporation Amalgamation Sdn Bhd to G
increase the share of 20% equity held by IBEX Corporation Amalgamated Sdn Bhd (IBEX) in the consortium known as Detik Nagasari Sdn Bhd with the view to apply for the said project. The plaintiff met the then Minister of Finance for the proposal by the consortium to secure and increase in the equity of IBEX from H
20% to 60% in the consortium. The Unit Perancangan Ekonomi Jabatan Perdana Menteri (EPU) subsequently agreed to increase the equity to 60% for the proposed original bridge project. The plaintiff then obtained foreign fund for the original bridge project through Charles EJ Company incorporated in USA an initial of I

A RM640,000,000. The plaintiff's claim against the defendants was for payment of agreed remuneration, being RM20,000,000 due under a Letter of Undertaking (exh. P14) for services rendered. The plaintiff claimed to have secured for the first defendant the original bridge project, elevated the second defendant's equity B share in the Consortium from 20% to 60% from the Government of Malaysia and obtained the foreign funds for the said project. The plaintiff claimed to have used his influence and good relationship with the Government to procure the original bridge project. The first defendant contended that the plaintiff's C allegations that he had successfully procured the said project from the Government on account of his close relationship with the Government and Dato' Seri Megat Junid was contrary to the public policy, fraud and illegal. As such, it was contended that the letter of undertaking was void and illegal. The first defendant also D claimed that the plaintiff did not secure from the Government any contract in respect of the original bridge project. The first defendant claimed that it had eventually secured the crooked bridge project ('the GSB project') which was awarded by the Government to one Gerbang Perdana Sdn Bhd based on merits E and without the plaintiff's assistance. However, this GSB project was also called off and *ex gratia* compensation was paid to Gerbang Perdana Sdn Bhd.

Held (dismissing the plaintiff's claim with costs):

F **(1)** The defendants had not produced any evidence in support of their assertion that the nature of the services rendered by the plaintiff had a tendency to be injurious to the public welfare or interest and what was that nature of the injury that had been inflicted on the general public. The bare assertion on the G defendants' behalf that the nature of services rendered by the plaintiff for which the defendants had agreed to pay the remuneration of RM20,000,000 was opposed to public policy pursuant to s. 24(e) of the Contracts Act 1950 was insufficient and could not be sustained on the facts and H surrounding circumstances. The services rendered by the plaintiff was not for an unlawful purpose or to achieve an unlawful end. Neither was it tainted with illegality as the bridge project if it had proceeded would have been for the public good, use and benefit. (para 21)

I

(2) Merely having close relationship or contact with Government leaders and having had assisted the second defendant to procure the original bridge project through the plaintiff's influence, is not *per se* opposed to public policy unless the consideration and object was inimical or tainted with any illegality as envisaged by s. 24(e) of the Contracts Act 1950. The plaintiff had carried out his obligations as required of him which was not through any illegal means or object or tainted with any unlawful motive or has harmful tendencies to the public welfare. (para 49)

(3) The second defendant had signed the said Letter of Undertaking as the Executive Director for and on behalf of the first defendant and also on his own behalf. Therefore, the issue of a separate entity between the first defendant and the second defendant or that there was no contractual obligation between them did not arise. The second defendant could not disclaim liability on his personal capacity. (para 74)

(4) The agreed remuneration was subject to the other terms of the Letter of Undertaking. The Letter of Undertaking had to be read as a whole. The plaintiff was not entitled to the said remuneration because: First, the original project did not proceed as no agreement was reached between the governments of Malaysia and Singapore. Consequently, the award given in principle for the original bridge project did not materialise. Secondly, even if the GSB project had nexus and causative link to the plaintiff's services, the GSB project had been called off or terminated due to the change of Government leaders in Malaysia. Accordingly, the plaintiff was not entitled to the payment of the said sum of RM20,000,000 or to claim any payment in the *ex gratia* compensation paid to Gerbang Perdana Sdn Bhd. The plaintiff had agreed to refund any payment received if the project was not subsisting and the award withdrawn or terminated for any reason whatsoever. (paras 85-87)

Case(s) referred to:

Ahmad Udoh & Anor v. Ng Aik Chong [1969] 1 LNS 4 HC ***(refd)***

Ahmad Zaini Japar v. TL Offshore Sdn Bhd [2002] 5 CLJ 201 HC ***(refd)***

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case [1995] 3 CLJ 639 CA ***(refd)***

Alfred Templeton & Ors v. Low Yat Holdings Sdn Bhd & Anor [1989] 2 MLJ 202 ***(refd)***

A *Amalgamated Investments and Property Co Ltd v. Texas Commerce International Bank Ltd [1982] QB 84* ***(refd)***
American Surety Co, New York v. Colgary Milling Co Ltd [1919] 48 DLR 295 ***(refd)***
Attorney General of Hong Kong and Another v. Humphreys Estate (Queen's Garden) Ltd [1987] 1 AC 114 ***(refd)***
B *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Berhad [1995] 4 CLJ 283 FC* ***(refd)***
Brett Andrew Macnamara v. Kam Lee Kuan [2008] 7 CLJ 625 HC ***(refd)***
Caswell v. Powell Duffryn Associates Collieries Ltd [1940] AC 152 ***(refd)***
Central Inland Water Transport Corpn Ltd v. Brojo Nath Ganguly AIR
C *[1986] SC 1571* ***(refd)***
Charles Ooi Kiah Inn & Anor v. Kukuh Maju Industries Sdn Bhd [1993] 3 CLJ 199 SC ***(refd)***
Chase Perdana Bhd v. Md Afendi Hamdan [2009] 6 CLJ 501 FC ***(refd)***
Cheng Swee Tiang v. PP [1964] 1 LNS 19 FC ***(refd)***
D *Commissioner for Religious Affairs; Trengganu & Ors v. Tengku Mariam Tengku Sri Wa Raja & Anor [1970] 3 LNS 1 FC* ***(refd)***
Coramas Sdn Bhd v. Rakyat First Merchant Bankers Bhd & Anor [1994] 2 CLJ 143 SC ***(refd)***
Dato' Dr Joseph Eravelly v. Dato' Hilmi Mohd Nor & Ors [2011] 3 CLJ 294 HC ***(refd)***
E *Datuk Ong Kee Hui v. Sinyium Mutit [1982] CLJ 539; [1982] CLJ (Rep) 87 FC* ***(refd)***
Dato' Tan Heng Chew v. Tan Kim Hor & Another Appeal [2006] 1 CLJ 577 FC ***(refd)***
David Wong Hon Leong v. Noorazman Adnan [1995] 4 CLJ 155 CA ***(refd)***
De Tehihatchef v. Salerni Coopling Ltd [1932] I Ch 330 ***(refd)***
F *Dowson Bank v. Nippon Menkwekabashiki Kaisha LR 62 1A 100* ***(refd)***
Engku Leh v. Che Wok [1948] 1 LNS 113 CA ***(refd)***
Foo Say Lee v. Ooi Heng Wai [1968] 1 LNS 38 FC ***(refd)***
Freeman v. Cooke [1848] 2 Ex 654 ***(refd)***
Harrington v. The Victoria Graving Dock Company [1878] QBD (Vol III)
G *549* ***(refd)***
Hopewell Construction Co Ltd v. Eastern & Oriental Hotel [1951] Sdn Bhd [1986] 2 CLJ 299; [1986] CLJ (Rep) 376 HC ***(refd)***
Jones v. Great Western Railway Company [1930] AC 152 ***(refd)***
Jones v. Lipman [1962] 1 All ER 442 ***(refd)***
Kamsul Mohd Razali v. Choong Yoke Ngoh [2009] 1 LNS 732 HC ***(refd)***
H *Kidurong Land Sdn Bhd & Anor v. Lim Gaik Hua & Ors [1990] 1 CLJ 687; [1990] 1 CLJ (Rep) 141 SC* ***(refd)***
Koid Hong Keat v. Rhina Bhar [1989] 2 CLJ 1219; [1989] 2 CLJ (Rep) 5 HC ***(refd)***
Law Kam Loy & Anor v. Boltex Sdn Bhd & Ors [2005] 3 CLJ 355 CA
I ***(refd)***

Macaura v. Northern Assurance Co Ltd & Ors [1924] AC 616 ***(refd)***
Maharashtra State Board of Secondary & Higher Secondary Education v. Gandhi & Ors [1991] 2 SCC 716 ***(refd)***
Mahendra Gill v. Election Commission [1978] 1 SCC 447 ***(refd)***
Man Financial (S) Pte Ltd v. Wong Bark Chuan David [2008] 1 SLR 663 ***(refd)***
Monkland v. Jack Barclay Limited [1951] 2 KB 252 ***(refd)***
Montefiore v. Menday Motor Components Company, Limited [1917] 2 KB 241 ***(refd)***
Mustafa Osman v. Lee Chua (P) [1996] 3 CLJ 494 CA ***(refd)***
Nahar Singh Mitt Singh v. Pang Hon Chin [1983] 1 CLJ 310; [1983] CLJ (Rep) 657 HC ***(refd)***
Nordon v. cde [1980] Esp 253 ***(refd)***
Norman Disney & Young v. Affifi Hj Hassan [2011] 1 CLJ 210 HC ***(refd)***
Osborne v. Bank of the United States, 9 wheat 738-866 ***(refd)***
Parkinson v. College of Ambulance Ltd [1925] 2 KB 1 ***(refd)***
Pua Kim Seng v. Mohamad Khashim Abdul Sakor & Anor [2010] 1 LNS 29 CA ***(refd)***
Re Mahmood and Ispahan [1921] 2 KB 716 ***(refd)***
Standard Chartered Bank Aust Ltd v. Bank of China [1991] 23 NSWLR 164 ***(refd)***
Sundralingam v. Ramanathan Chettiar [1967] 1 LNS 173 FC ***(refd)***
Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor [1997] 1 CLJ 529 FC ***(refd)***
Suntoso Jacob v. Kong Miao Ming [1986] 2 MLJ 170 ***(refd)***
Taylors Fashions Ltd v. Liverpool Victoria Friendly Society [1981] 1 All ER 897 ***(refd)***
Taylors Fashions Ltd v. Liverpool Victoria Trestees Co Ltd [1982] QB 133 ***(refd)***
Tekron Resources Limited v. Guinea Investment Company Limited Queens Bench Division [2003] EWHC 2577 ***(refd)***
Teo Hock Guan & Anor v. Johore Builders & Investments Sdn Bhd [1996] 4 CLJ 184 CA ***(refd)***
The Aspinall Curzon Ltd v. Khoo Teng Hock [1991] 1 LNS 6 HC ***(refd)***
Theresa Chong v. Kin Koon & Co [1976] 1 LNS 165 FC ***(refd)***
Thong Foo Ching & Ors v. Shigenori Ono [1998] 4 CLJ 674 CA ***(refd)***
YK Fung Securities Sdn Bhd v. James Capel (Far East) Ltd [1997] 4 CLJ 300 CA ***(refd)***
Waltons Stores (Interstate) Ltd v. Maher [1988] 164 CLR 387 ***(refd)***
Wood v. Little [1921] CLR 564 ***(refd)***

Legislation referred to:
Contracts Act 1950, ss. 10, 23, 24(a), (b), (e), 25
Registration of Engineers Act 1967, s. 10(4)
Rules of the High Court 1980, O. 18 r. 19(1)(a), (b), (c)

A *For the plaintiff - Dato' CV Prabakharan (Michael Teo, Ivy Teoh, Shariza Ashari, CW Low with him); M/s AB Teoh & Shariza*
For the defendants - KW Chang (Stanley & LK Chan with him); M/s Stanley Chang & Partners

B *Reported by Amutha Suppayah*

JUDGMENT

C **VT Singham J:**

[1] The plaintiff's claim against the defendants which was filed on 7 January 2002 (encl. 1) and as per the amended statement of claim dated 7 March 2011 briefly, is, for payment of agreed remuneration, being RM20,000,000 due under the Letter of
D Undertaking dated 3 July 1998 (exh. P14) for services rendered. The said Letter of Undertaking is reproduced and is as follows:

Letter Of Undertaking

E To;

Mr. Shazryl Eskay bin Abdullah
I.C. 600216-02-5215
22 Jalan Bruas
Damansara Heights
F 50490 Kuala Lumpur

WHEREAS the Procuror has at our request agreed to render his services for the purpose of procuring and securing from the Government of Malaysia the award of the project known as "Cadangan Pembinaan Jambatan Menggantikan Tambak Johor
G secara Penswastaan" (hereinafter referred to as the "Project") in favour of the Consortium called SURIA KALBU SDN BHD of No. 3, Jalan 222, 46000 Petaling Jaya (Company Registration No. 452586-U) (hereinafter called the "Consortium") of which we have a 60% equity participation in the issued share capital.

H *WHEREAS through the Procuror's services aforesaid the Unit Perancang Ekonomi Jabatan Perdana Menteri by letter dated 22th June 1998 has awarded in principle the project to the consortium* (emphasis added).

In consideration of the services aforesaid rendered by the Procuror we
I *Merong Mahawangsa Sdn Bhd* (Company Registration No. 463227-X) a company incorporated in Malaysia and having its registered

address at No. 3374, Jalan 18/31, Taman Sri Serdang, 43300 Seri Kembangan, Selangor Darul Ehsan *hereby undertakes and agrees to pay you sum of Ringgit Malaysia Twenty Million only (RM20,000,000.00) being the agreed remuneration payable on or before 3rd November, 1998* (emphasis added).

This undertaking shall remain valid so long as the award for the project remains valid and subsisting and *should the award be withdrawn and or terminated for any reasons whatsoever the aforesaid sum of RM20,000,000.00 or any part thereof shall be refunded without interest immediately*. (emphasis added).

Dated this 3rd day of July 1998

sgd

...

Yahya bin A. Jalil
Pengarah Eksekutif
Merong Mahawangsa Sdn Bhd

I confirm my agreement to
the Undertaking aforesaid

sgd

...

Syazryl Eskay bin Abdullah

[2] By the amended statement of claim dated 7 March 2011, the plaintiff has claimed that he had rendered the following services:

i. to obtain the tender and to secure from the Government of Malaysia in respect of a contract project known as *"Cadangan Pembinaan Jambatan menggantikan Tambak Johor secara penswastaan"* (proposed construction of a bridge to replace the Johore-Singapore causeway) (hereinafter referred to as *"the original bridge project"*) for the benefit and interest of the first defendant;

ii. to elevate the second defendant's equity share in the Consortium from 20% to 60% from the Government of Malaysia;

iii. for obtaining foreign funds from Charles E-Jay Company which was incorporated in Demopolis, Alabama, United States of America to fund the said project amounting to RM640,000,00;

A iv. The plaintiff *used his influence and good relationship with the Government of Malaysia* to procure *the original bridge project (SIG project)* for the benefit and interest of the first defendant (emphasis added);

B v. *In consideration of the plaintiff's services rendered,* the first defendant through the second defendant gave a *Letter of Undertaking dated 3 July 1998 (exh. P14)* whereby the first defendant undertakes and *agreed to pay the plaintiff the sum of RM20,000,000 as an agreed remuneration* which amount should be paid on or before 3 November 1998 (emphasis added);

C vi. the defendants had failed to make such agreed payment in view of the fact that he *had successfully secured the original bridge project* from the Government of Malaysia for the benefit of the defendants (emphasis added).

D **[3]** By the amended statement of defence dated 7 March 2011, the first defendant *inter alia* and briefly has pleaded as follows:

i. The plaintiff's allegations that he had successfully procured the said project for the first and second defendant from the Government of Malaysia on the grounds that he *has a close* E *relationship with the Government of Malaysia and Dato' Seri Megat Junid is contrary to the public policy, fraud and illegal* (emphasis added).

ii. Any letter of undertaking signed by the second defendant for the services rendered by the plaintiff is *void and illegal.* F

iii. the first defendant did not secure from the Government of Malaysia any contract in respect of the original bridge project and the first defendant was never awarded the original bridge project by the Government of Malaysia.

G iv. Based on the merits and venture with *Gerbang Perdana Sdn Bhd,* the crooked bridge project (hereinafter referred to as "the GSB project") was awarded by the Government of Malaysia through a Letter of Acceptance dated 1 August 2003 (exh. P18) and a contract dated 11 August 2003 which H was signed between Government of Malaysia and Gerbang Perdana Sdn Bhd.

v. However, the original bridge project had never materialised as the Government of Singapore did not agree to proceed with the project. The Letter of Undertaking dated 3 July I 1998 (exh. P14) is contrary to public policy, frustrated and impossible to put into effect.

vi. On 12 April 2006, the Government of Malaysia had terminated the said GSB project (exh. D29) and only preliminary works had been carried out. The bridge and other related works were not completed.

vii. the defendant did not obtain the 60% equity share in the Konsortium, Suria Kalbu Sdn Bhd

viii. the contract which was secured to the defendant was based on merits and technical capabilities including series of dialogue between the companies and Government of Malaysia and not based on influence and good relationship with any family members of any Ministers or government officers and/or under the demand of the plaintiff.

[4] By the amended statement of defence dated 7 March 2011, the second defendant, *inter alia* and briefly has pleaded as follows:

i. The plaintiff's allegation that he successfully procured the original bridge project for the first and second defendant from the Government of Malaysia since he has a close relationship with the Government of Malaysia and Dato' Seri Megat Junid *is contrary to public policy, fraud and illegal* (emphasis added).

ii. Any letter of undertaking signed by the second defendant for the services rendered by the plaintiff is void and illegal.

iii. The second defendant had denied that he had secured from the Government of Malaysia the original bridge project and the original bridge project had never been granted by the Government of Malaysia.

iv. the said *GSB project* was awarded by the Government of Malaysia through a Letter of Acceptance dated 1 August 2003 (exh. P18) and the contract dated 11 August 2003 which was signed between Government of Malaysia and *Gerbang Perdana Sdn Bhd* was based on the merits and venture with Gerbang Perdana Sdn Bhd.

v. The plaintiff had failed to fulfil all the terms stipulated in the Letters of Undertaking and naturally and automatically is prohibited from receiving any consideration from the defendants.

vi. Based on the principle of laws, the said undertaking was no longer valid and enforceable because the plaintiff had failed to fulfil all the terms and conditions in the said undertaking.

A As a result, all the terms and conditions in the said undertaking is null and have no legal effect and both the defendants are discharged from the terms of the said undertakings.

vii. *IBEX Corporation Amalgamated Sdn Bhd* and Merong B Mahawangsa Sdn Bhd (the first defendant) is not a related company and it is irrelevant in this suit.

viii. The original bridge project was never awarded by the Government of Malaysia to *Suria Kalbu Sdn Bhd* or any of the defendants. C

ix. The original bridge project did not materialise.

x. The letter from Ketua Pengarah Unit Perancang Ekonomi (EPU) dated 25 June 1998 *(exh. P26)* was not the letter which had awarded the original bridge project. D

[5] By the amended answer to the amended statement of defence of the second defendant dated 9 March 2011, the plaintiff, *inter alia* and briefly has pleaded as follows:

E i. the Letter of Undertaking dated 3 July 1998 (exh. P14) is not contrary to public policy.

ii. the first and the second defendants are estopped from denying the plaintiff's claims as both the defendants have agreed to the plaintiff services. F

i. The second defendant must be held liable jointly and/or severally for the payment of RM20,000,000 to the plaintiff

iii. the GSB project which was awarded to the *Gerbang Perdana* G *Sdn Bhd* and Ibex Corporation Amalgamated Sdn Bhd was because of the effort and services provided by the plaintiff (emphasis added).

iv. A large part of the bridge has already been completed, namely the Customs, Immigration and Quarantine. The H defendants have been compensated for the cancellation of the GSB project. Thus, the defendants will directly and indirectly enjoy the benefits of this compensation

I

Brief Background Facts

[6] Sometime in 1998 or pre 1998, there was a proposal to build a new bridge to replace the causeway between Johor and Singapore known as the "proposed construction of a bridge to replace the Johore-Singapore causeway" (the original bridge project).

[7] The second defendant approached the plaintiff to assist his company IBEX Corporation Amalgamation Sdn Bhd to increase the share of 20% equity held by IBEX Corporation Amalgamated Sdn Bhd (IBEX) in the consortium known as Detik Nagasari Sdn Bhd with the view to apply for the said project.

[8] The plaintiff met the then Minister of Finance of the proposal by the consortium to secure and increase in the equity of IBEX from 20% to 60% in the consortium.

[9] With the permission of the then Minister of Finance, Dato' Seri Anwar Ibrahim, the plaintiff took the second defendant to meet the then Minister of Finance after discussion, and the interest shown by the second defendant in the original bridge project. On meeting the then Minister of Finance, the second defendant was informed to meet the Director General of the Unit Perancangan Ekonomi Jabatan Perdana Menteri (EPU).

[10] Subsequently the second defendant through IBEX wrote a letter dated 21 May 1998 addressed to the Director General of the Unit Perancangan Ekonomi Jabatan Perdana Menteri (EPU), Tan Sri Abu Hassan bin Sulaiman. There is also a letter from IBEX dated 29 May 1998 to the Deputy Director General of Unit Perancangan Ekonomi Jabatan Perdana Menteri (EPU), Dato' Hamid Syawal.

[11] By a letter dated 25 June 1998, the Unit Perancangan Ekonomi Jabatan Perdana Menteri (EPU) had informed the second defendant as the Executive Chairman of IBEX agreeing to increase the equity to 60% for the proposed original bridge project. Sometime in 25 February 1998, the plaintiff had obtained foreign fund for the original bridge project through Charles EJ Company incorporated in Demopolis, Alabama, USA an initial of RM640,000,000 and an undertaking to provide additional requirement of funding.

A **[12] Learned Lead Counsel For The Plaintiff, *Inter Alia* And Briefly Had Submitted As Follows**

i. By the said letter of Undertaking dated 3 July 1998, the first and/or second defendant are obligated to pay to the plaintiff
B the sum of RM20,000,000 on or before 3 November 1998 together with interest and costs;

ii. The agreed remuneration of RM20,000,000 for the services already rendered by the plaintiff, is as evident by referring to
C the first part of the third paragraph of the said Letter of Undertaking dated 3 July 1998 (exh. P14), ie "in consideration of the services aforesaid rendered by the Procurer";

iii. By the letter dated 25 June 1998, Unit Perancang Ekonomi
D Jabatan Perdana Menteri (EPU) (exh. P26) has awarded in principle the original bridge project to the Consortium.

iv. By the said Letter of Undertaking dated 3 July 1998 (exh. P14), the defendants have expressly admitted that the
E services had already been rendered by the plaintiff which is culminated in the said Letter dated 25 June 1998 from Unit Perancang Ekonomi Jabatan Perdana Menteri (exh. P26).

v. The plaintiff had during the trial testified on the services
F rendered by him at the second defendant's request and had elaborated on the same, and culminating in the EPU letter dated 25 June 1998 (exh. P26) and the issuance of the said Letter of Undertaking (exh. P14).

vi. In return, the plaintiff would be given 16.66% equity in the
G second defendant's company/equivalent to 10% share in the consortium. This initial agreement was documented in an agreement which was prepared by Mesrss Kirpal Singh & Associates (exh. P2), though it was never signed, and was subsequently overtaken by the said Letter of Undertaking
H (exh. P14).

vii. The plaintiff had assisted to obtain foreign/international funding for the second defendant for the original bridge project (exh. P8).

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viii. The plaintiff having worked together with the second defendant, wrote various letters together and sought the assistance of the then Finance Minister and Deputy Prime Minister: Dato Seri Anwar Ibrahim, and the then Deputy Minister of Home Affairs: Dato' Seri Megat Junid bin Megat Ayob (see exhs. P9, P10 and P11)

ix. The plaintiff's services for which the remuneration of RM20,000,000 was promised by the defendants in the said Letter of Undertaking dated 3 July 1998 (exh. P14) had been already performed and the result of the plaintiff's efforts is evident by the letter dated 25 June 1998 from Unit Perancang Ekonomi Jabatan Perdana Menteri (EPU) (exh. P26).

x. The plaintiff had assisted the defendant to secure 60% equity in the original bridge project from their initial 20% based on the merits of foreign international funding through the plaintiff's source and confirmed for the defendants. There is nothing immoral or unlawful in what the plaintiff did for the defendants.

xi. The agreement of the said Letter of Undertaking does not fall within any of the "pigeon holes" or traditional categories and cannot be said to be opposed to public policy.

xii. The defendants had not shown anything what the plaintiff did, has tendency to be injurious to the public welfare. The defendants have not made the court aware of the feelings of the general public towards what the plaintiff has done. This Honourable Court would be unable to decide whether what the plaintiff did is injurious to the public welfare.

xiii. There is nothing shown that the plaintiff's services was "incontestably and in any view inimical to public interest".

xiv. The real consideration in the Letter of Undertaking was the giving up of the 16.66% stake in the defendants' company/ equivalent to 10% in the Consortium Company. There is nothing illegal or against such giving up as being contrary to public policy.

A xv. Even though the consortium has "evolve" from "Suria Kalbu Sdn Bhd", the defendants still holds the 60% equity that the plaintiff secured for them through the said letter dated 25 June 1998 from Unit Perancang Ekonomi Jabatan Perdana Menteri (EPU) (exh. P26). Merong Mahawangsa Sdn Bhd, B the first defendant, continues to hold 60% of the shares in the Gerbang Perdana Sdn Bhd.

xvi. The defendants are estopped from denying their liability to pay the agreed remuneration and the principles of *estoppel* C and equity is that:

i. The defendant had agreed to pay RM20,000,000 to the plaintiff.

ii. In reliance of that promise and representation, the D plaintiff had expanded efforts to procure and secure the award of the original bridge project.

iii. The defendants ought not to be allowed to now deny the obligation to pay the said remuneration to the E plaintiff merely because they have now used another consortium company for the project.

xvii. Though the said GSB project has now been cancelled by the Government, it is also common knowledge a large part F of the project had already been completed, namely the Customs, Immigration and Quarantine and Gerbang Perdana Sdn Bhd had been handsomely compensated for the cancellation of the project. Thus the defendants will directly and indirectly enjoy the benefit of this handsome G compensation. Hence, though the project itself may have been cancelled, the initial award of the project to the Consortium which the defendants have 60% equity, still remains valid and subsisting and forms the basis upon which the handsome compensation will be paid. The award has not H been withdrawn or terminated.

[13] In support of the plaintiff's case, learned lead counsel for the plaintiff had referred to the following cases:

I

1. *Theresa Chong v. Kin Koon & Co* [1976] 1 LNS 165 A

2. *Hopewell Construction Co. Ltd. v. Eastern & Oriental Hotel (1951) Sdn Bhd* [1986] 2 CLJ 299; [1986] CLJ (Rep) 376

3. *Koid Hong Keat v. Rhina Bhar* [1989] 2 CLJ 1219; [1989] 2 CLJ (Rep) 5 B

4. *Pua Kim Seng v. Mohamad Khashim bin Abdul Sakor & Anor* [2010] 1 LNS 29; [2010] 5 MLJ 791

5. *YK Fung Securites Sdn Bhd v. James Capel (Far East) Ltd* [1997] 4 CLJ 300 C

6. *David Wong Hon Leong v. Noorazman bin Adnan* [1995] 4 CLJ 155

7. *Ahmad Zaini Japar v. TL Offshore Sdn Bhd* [2002] 5 CLJ 201 D

8. *Boustead Trading (1985) Sdn Bhd v. Arab Malaysian Merchant Bank Berhad* [1995] 4 CLJ 283

9. *Wood v. Little* [1921] CLR 564 E

10. *Marlwood Commercial Inc v. (1) Viktor Kozeny (2) Charles Towers-Clark (3) Oily Rock Group Limited (4) The Mineret Group Limited*

    (1) *Omega Group Holdings Limited (2) Pine Street Investment Limited (3) Helendale Trading Corporation (4) Pinford Portfolio Inc (5) Telos Finance Limited (6) Pharos Finance Limited (7) Water Street Management Limited v. (1) Viktor Kozeny (2) Charles Towers-Clark (3) Oily Rock Group Limited (4) The Mineret Group Limited Queens Bench Division, Commercial Court* [2006] EWHC 872 (Comm) F G

11. *Tekron Resources Limited v. Guinea Investment Company Limited Queens Bench Division* [2003] EWHC 2577 (QB)

[14] On the other hand, learned counsel for the defendants, *inter alia* and briefly had submitted as follows: H

i. The said Letter of Undertaking dated 3 July 1998 *(exh. P14)* is against public policy and hence illegal, void and unenforceable. The plaintiff in his sworn witness statement *(exh. P4)*, had repeatedly said that *he had used his influence with* I

A *the Government leaders* to assist the defendants in getting the original bridge project stated in the said Letter of Undertaking dated 3 July 1998 *(exh. P14)* (emphasis added).

ii. The terms in the said Letter of Undertaking dated 3 July
B 1998 *(exh. P14)* were not fulfilled/ complied and hence cannot be enforced.

iii. *Gerbang Perdana Sdn Bhd* was awarded the GSB project named Design, Construction, Completion and Commissioning of
C Gerbang Selatan Bersepadu Road Bridge, Rail Bridge and Associated Works at Johor Bahru *(exh. D27)* on its own merits.

iv. The second defendant signed the said Letter of Undertaking dated 3 July 1998 *(exh. P14)* in his capacity as Executive
D director on behalf of the first defendant. There is no contractual relationship between the plaintiff and the second defendant.

[15] On the other hand, in support of the defendants case,
E learned counsel for the defendants, had referred to the following cases:

1. *Thong Foo Ching & Ors v. Shigenori Ono* [1998] 4 CLJ 674
2. *Mustafa Osman v. Lee Chua (P)* [1996] 3 CLJ 494
F
3. *Montefiore v. Menday Motor Components Company, Limited* [1917] 2 KB 241
4. *Suntoso Jacob v. Kong Miao Ming* [1986] 2 MLJ 170
G 5. *Norman Disney & Young v. Affifi Hj Hassan* [2011] 1 CLJ 210
6. *Kamsul Mohd Razali v. Choong Yoke Ngoh* [2009] 1 LNS 732
7. *Chase Perdana Bhd v. Md Afendi Hamdan* [2009] 6 CLJ 501
H 8. *Law Kam Loy & Anor v. Boltex Sdn Bhd & Ors* [2005] 3 CLJ 355

Decision

I **[16]** Having gone through and examined closely the pleadings, the totality of the evidence, both oral and documentary together with the submissions and authorities referred to by both parties and the research carried out by this court, the decision of this court is:

i. In contesting the plaintiff's claim, the main legal issue raised on behalf of the defendants in the present case, is, whether the consideration, being the agreed remuneration of RM20,000,000 payable to the plaintiff by the defendants pursuant to the said Letter of Undertaking dated 3 July 1998 (exh. P14) is opposed to public policy, illegal and void and therefore, unenforceable pursuant to s. 24(e) of the Contracts Act 1950.

Section 24(e) of the Contracts Act 1950 provides, *inter alia* and which is relevant for the purpose of this case, as follows:

> 24. The consideration or object of an agreement is lawful, unless:
>
> (e) The court regards it as immoral, or opposed to public policy.
>
> In each of the above cases, the **consideration or object of an agreement** is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Public Policy

[17] On the issue of public policy, if this court were to regard the consideration or object being the agreed remuneration of RM20,000,000 as contained in the said Letter of Undertaking is opposed to public policy, illegal and consequently, unenforceable as being void, the plaintiff's claim must necessarily fail. On the other hand, if this court were to regard the consideration, being the agreed remuneration of RM20,000,000 payable to the plaintiff as contained in the said Letter of Undertaking or the object of the services rendered by the plaintiff when considered together with the rest of the evidence, both oral and documentary, is not opposed to public policy as envisaged by s. 24(e) of the Contracts Act 1950, this court will have to consider the other defences raised on behalf of the defendants. The other defences, namely and most importantly are:

i. the award of the said GSB project given subsequently to Gerbang Perdana Sdn Bhd was not due to the effort and services provided by the plaintiff but it was awarded by the Letter of Award dated 1 August 2003 (exh. P18) and a contract dated 11 August 2003 by the Government of Malaysia on the defendants' own merits.

A ii. that the plaintiff is not entitled to the remuneration under the said Letter of Undertaking as the GSB project for the construction of the crooked bridge (GSB) had been terminated.

B **[18]** Based on the plaintiff's claim which is for breach of contract, the defendants' main defence is, the contract is opposed to public policy by reason of s. 24(e) of the Contracts Act 1950. However, the Contracts Act 1950 does not define the expression 'public policy' or 'opposed to public policy'. These expressions are C incapable of precise definition and neither the nature of things or circumstances is exhaustive. Public policy is not the policy of a particular government. It connotes the same matter which concerns public good and public interest. (See *Central Inland Water Transport Corpn Ltd v. Brojo Nath Ganguly* AIR [1986] SC 1571, D [1986] 3 SCC 156) (See *Halsbury's Laws of India*).

[19] In any event, public policy has been defined by many common law countries, including India, whose Contract Act, s. 23 is *pari materia* with our s. 24 of the Contracts Act 1950. (See E *Halsbury's Laws of India* 11 Butterworths):

> The term "public policy" points to political, economical or social grounds of objection, outside the common topics of morality. 'Public policy' is the principle which declares that *no man can lawfully do that which has a tendency to be injurious to the public* F *welfare.* Reference to the public policy requires taking into account the interest of persons other than the parties (emphasis added);
>
> Public policy or the policy of the law is an illusive concept; it has been described as 'untrustworthy guide', 'variable quality', 'uncertain one', 'unruly horse', etc; *the primary duty of a court of* G *law is to enforce a promise which the parties have made and to uphold the sanctity of contracts which form the basis of society, but in certain cases, the court may relieve them their duty on the founded on what is called the public policy. The doctrine of public policy* is extended not only to harmful cases but also to the harmful tendencies; ... the principles have been crystallised under different heads and though H is permissible for court to expound and apply them to different situations, *it should only be invoked in clear and incontestable cases of harm to the public* (see *Gherulal Parakh v. Mahadeodas Maiya* [1959] Supp (2) SCR 406, AIR [1959] SC 78).

I

The doctrine of public policy is only a branch of common law. It is governed by precedents. The doctrine should only be invoked in clear and incontestable cases of harm to the public. Though the heads are not closed, and though theoretically it may be permissible to evoke a new head under exceptional circumstances of a changing world, *it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days.* The court is not the legislator; it cannot initiate the principle; it can only state or formulate it if it already exists. (See *Janson v. Driefontein Consolidated Mines Ltd* (1900-03) All ER 426 (HL)).

A contract which has been tendency to injure public interest and public welfare is one against public policy. What constitute an injury to public interest or welfare would depend upon the times and the climes. The social milieu in which the contract is sought to be enforced would decide the factum, the nature and the degree of the injury. The concept of public policy is not immutable, since it must vary with the changing needs of the society. (See *Baghwant Genuji Girme v. Gangabisan Ramgopal* AIR [1940] Bom 369).

But the courts should use extreme reserve in holding a contract as void against public policy, and should do so only when the contract is incontestable and on any view inimical to the public interest. The doctrine should be invoked only in clear cases in which harm to the public in substantially incontestable and does not depend upon idiosyncratic inferences of a few judicial minds. (See *Gulabchand Gambhirmal v. Kudilal Govindram* AIR [1959] MP 151).

But the duty of court is to expound and not expand the doctrine of public policy, and the doctrine should be invoked only in clear cases where the harm to the public is substantially incontestable and does not depend upon idiosyncratic inferences of a few judicial mind. (See *Janson v. Driefontein Consolidated Mines Ltd* (1900-03) All ER 426 (HL)).

Agreement tending to injure public service are illegal and void as being opposed to public policy. (See *Kolopatri Venkatareddi v. Kolaparti Peda Venkatachalam* AIR [1964] AP 465).

[20] In *Cheng Swee Tiang v. PP* [1964] 1 LNS 19, Wee Chong Jin CJ observed as to what is termed as public policy:

… the use of the doctrine of public policy has consistently been frowned upon by the courts. Burrough J (quoting Hobart CJ) said of it in *Richardson v. Mellish* 'Public policy is an unruly horse, and difficult to ride.' Parke B. said of it in *Egerton v. Brownlow* 'Public policy is a vague and unsatisfactory term…; it is capable of being

A understood in different senses, it may, and does, in its ordinary sense, mean 'political expedience', or that which is best for the common good of the community; and in that sense there may be every variety of opinion, according to education, habits, talents, and dispositions of such person, who is to decide, whether an act is against public policy or not. To allow this to be a ground of judicial decision, would lead to the greatest uncertainty and confusion.' More recently Lord Atkin in *Fender v. Mildmay* said of it '… the doctrine should only be invoked in clear cases in which the harm to the public is substantially incontestable …' (See also *Brett Andrew Macnamara v. Kam Lee Kuan* [2008] 2 MLJ 450).

[21] This court is of the considered view that the defendant had not produced any evidence in support of their assertion that the nature of the services rendered by the plaintiff has a tendency to be injurious to the public welfare or interest and what is that nature of the injury that has been inflicted on the general public. The bare assertion on the defendants' behalf that the nature of services rendered by the plaintiff for which the defendants had agreed to pay the remuneration of RM20,000,000 is opposed to the public policy pursuant to s. 24(e) of the Contracts Act 1950 is insufficient and cannot be sustained on the facts and surrounding circumstances. (See *Theresa Chong v. Kin Koon & Co* [1976] 1 LNS 165; [1976] 2 MLJ 253 at 255-256, *Pua Kim Seng v. Mohamad Khashim bin Abdul Sakor & Anor* [2010] 1 LNS 29; [2010] 5 MLJ 791 at p 801, *Brett Andrew Macnamara v. Kam Lee Kuan* [2008] 7 CLJ 625).

[22] In *Theresa Chong v. Kin Koon & Co*

(i) in dismissing the defendants' appeal, the Federal Court, held that the contract between the plaintiff and the defendant was not illegal and did not fit into any of any traditional pigeon holes which is opposed to public policy.

(ii) The Federal Court had also referred to the commentary by *Pullock and Mulla* (8th edn) on s. 23 of the Indian Contract Act which is *pari materia* with our s. 24 on the term "opposed to public policy" which states:

> The general head of public policy covers, in English law, a wide range of topics. Agreements may offend against public policy by tending to the prejudice of the State in time of war (trading with enemies, etc.), by tending to the perversion or abuse of municipal justice (stifling prosecutions, champerty and maintenance) or, in private life,

> by attempting to impose inconvenient and unreasonable restrictions on the free choice of individuals in marriage, or their liberty to exercise any lawful trade or calling … It is now understood that the doctrine of public policy will not be extended beyond the classes of cases already covered by it. No court can invent a new head of public policy.

(iii) In fact, the Federal Court had referred to the case of *Monkland v. Jack Barclay Limited* [1951] 2 KB 252 where Asquith LJ said at p. 265:

> Certain specific classes of contracts have been ruled by authority to be contrary to the policy of the law, which is, of course, not the same thing as the policy of the government, whatever its complexion – for example, marriage brokerage contracts, contracts for the sale of honours, contracts in unreasonable restraint of trade and so on. *The courts have again and again said that, where a contract does not fit into one or other of these pigeon holes, but lies outside this charmed circle, the courts should use extreme reserve in holding such a contract to be void as against public policy, and should only do so when the contract is incontestably and on any view inimical to the public interest: see, for example, the language of the House of Lords in Fender v. St John-Mildmay* [1938] AC 1. (emphasis added).

[23] On the facts and surrounding circumstances in the present case, this court is unable to regard the nature of the plaintiff's services rendered as incontestably and in any way inimical or opposed public interest. (See *YK Fung Securities Sdn Bhd v. James Capel (Far East) Ltd* [1997] 4 CLJ 300 at 348-349, *David Wong Hon Leong v. Noorazman Adnan* [1995] 4 CLJ 155, *Ahmad Zaini Japar v. TL Offshore Sdn Bhd* [2002] 5 CLJ 201, Visu Sinnadurai, *Law of Contract* (3rd edn)).

[24] In *Ahmad Zaini Japar v. TL Offshore Sdn Bhd* [2002] 5 CLJ 201, his Lordship Abdul Malik Ishak J (now JCA) had declined to follow the decision in *Montefiore v. Menday Motor Components Company, Limited* [1917] 2 KB 241 and his Lordship said that the court is bound to follow the decision of the Court of Appeal in *David Wong Hon Leong v. Noorazman Adnan* [1995] 4 CLJ 155 (see *Ahmad Zaini Japar v. TL Offshore Sdn Bhd* [2002] 5 CLJ 201, Visu Sinnadurai, *Law of Contract* (3rd edn)).

[25] In *Monte Fiore v. Mendy Components Co. Ltd*, the case relied on by learned counsel for the defendants, the plaintiff was a member of the Imperial Air Fleet Committee. He held out to the defendant that he could assist the defendant with getting finance from the Air Board. In return he was to obtain 10% of the amount received and some shares. The plaintiff was to put in a good word for the defendant. In the course of his judgment, Sherman J said at pp. 244-245:

> The true consideration for the giving of the note was that the plaintiff should used his alleged position and the value of his good word, in favour of the defendant's in getting Government assistance in the form of money or contracts.

[26] In other words, *Monte Fiore v. Mendy Components Co. Ltd* was a case in which the plaintiff simply sold his influence. He did not offer to provide any proper services. His influence was to be used improperly to obtain loans which otherwise might not have been made. (See *Tekron Resources Ltd v. Guinea Investment Co. Ltd* 2003 EWHC 25nn (QB)).

[27] In *Parkinson v. College of Ambulance Ltd* [1925] 2 KB 1 the secretary of the defendants had fraudulently told the plaintiff that, if he donated a large sum to the defendants he would undertake to secure him a "knightwood". The plaintiff did not receive the "knightwood" and sought to recover his money. The court held the contract to be illegal as the plaintiff had failed to recover his money. (See also *Nordon v. cde* [1980] Esp 253).

[28] As for the case *Suntoso Jacob v. Kong Miao Ming* [1986] 2 MLJ 170 at p 174; the court said:

> the intention of the parties and the purpose of the transaction are clearly relevant. Where a transaction which on the face of it is lawful in entered into for an unlawful purpose or to achieve an unlawful end, the transaction is tainted with illegality and is unenforceable.

[29] However, on the facts and surrounding circumstances in the present case, this court is unable on the face of it, to regard the services or consideration as opposed to public policy. This court finds the services rendered by the plaintiff is not for an unlawful purpose or to achieve an unlawful end. Neither is it tainted with illegality as the bridge project if it had proceeded would have been for the public good, use and benefit.

[30] As to the cases referred to and relied on by learned counsel for the defendants, most of the cases, with respect, are breach of express terms of statute and are distinguishable on the facts in the present case.

[31] In *Norman Disney & Young v. Afifi Hj Hassan* [2011] 1 CLJ 210 the court found that there was an attempt to circumvent the requirements under the Registration of Engineers Act 1967.

[32] In that case, the court arrived at a finding of fact that:

(1) The plaintiff's true intention was to create "Ali Baba" type of companies where the control of the companies which were incorporated in Malaysia were still vested under the control of the foreigners. Therefore, the court found the establishment of the companies as "Ali Baba" companies, which is illegal as it is against the Malaysian public policy.

(2) there was a breach of s. 24(a) and (b) of the Contracts Act 1950, and that it has also contravened s. 10(4) of the Registration of Engineers Act 1967.

[33] In those circumstances, the plaintiff's claim was struck out under O. 18 r. 19(1)(a), (b) and (c) of the Rules of High Court 1980 without proceeding to trial.

[34] Whereas in the present case, there is no issue of the plaintiff having attempted to circumvent the requirement of any statutory provisions or rules. Neither did the plaintiff have any intention to create an "Ali Baba" type of company as was found in that case. The facts and surrounding circumstances in that case are poles apart and the observation made in that case is easily distinguishable and does not apply to the facts and surrounding circumstances of the present case. (See *Ahmad bin Udoh & Anor v. Ng Aik Chong* [1969] 1 LNS 4).

[35] In the unreported case of *Kamsul Mohd Razali v. Chung Yoke Ngoh* [2009] 1 LNS 732 there were two suits filed by the plaintiff against the defendant. Both the suits were consolidated by the order of court in 2003, namely Kuala Lumpur High Court Civil Suit No. 22-270-1998 and Shah Alam High Court Civil Suit No. 22-511-1998.

[36] In the K.L suit, the plaintiff's claim was for the sum of RM4.9 million which was based on the settlement agreement dated 23 February 1998. The defendant had contested the claim on two grounds, first, that the agreement is invalid and unenforceable as there was lack of freewill or consent on the part of the defendant. Secondly, the consideration or object was unlawful as it is opposed to public policy and void pursuant to s. 24 and s. 25 of the Contracts Act 1950.

[37] The background facts of the suits briefly, and *inter alia*, are as follows:

i. the plaintiff was a former employee of Isolectra (M) Sdn Bhd. The Chairman of the company is a person by the name of Tan Sri Othman bin Merican, the husband (now former husband) of the defendant.

ii. The plaintiff left the company in October 1992. After having left the company, the plaintiff had alleged that he had provided consultancy works and services to the defendant to secure contract from Tenaga Nasional Berhad. The defendant has denied the claim.

iii. In the meantime, the defendant had issued various cheques and paid a large sum of money to the plaintiff. The settlement agreement dated 23 February 1998 was entered into for the payment of the same.

NOTE:

> This court will limit its observation of that case in reference to the alleged violation of public policy, which has been raised in the present case, pursuant to s. 24(e) of the Contracts Act 1950.

[38] In the K.L suit, the facts of the case, briefly, and *inter alia*, are as follows:

i. On 23 April 1995 defendant had lodged a police report alleging *inter alia* that she was being extorted for money. The plaintiff was arrested and detained for a few days and later he was released and no criminal charges were instituted against him. The plaintiff has contended that the said police report was a false report. After the settlement agreement dated

28 February 1998 was signed, the defendant reneged on the agreement. The plaintiff then lodged a police report against the defendant. She was charged in court for lodging false police report. She pleaded guilty and was fined. The consideration for the settlement agreement was that in payment for all the amount due, the plaintiff will "drop all charges against the defendant based on the said police report".

[39] In the Shah Alam suit, the plaintiff's claim is based on two dishonoured cheques totalling the sum of RM485,000.

[40] In dismissing the plaintiff's claim, the court had *inter alia* relied in the old English case of *Montefiore v. Menday Motor Components Company, Limited* [1917] 2 KB 241 and observed that:

what is important is that if the court were to uphold such contracts, it may lead to an appearance or perception that the courts condone or even encourage such agreements.

[41] It is important to distinguish the facts in *Montefiore v. Menday Motor Components Co. Ltd* in that case, the managing director of the defendants company had handed commission note to the plaintiff on the following terms:

In consideration of your finding me the necessary capital, I'm prepared to pay you 10% on the amount introduced either direct or indirect, and also to allot you 40 shares in the Mandy Motor Component Ltd.

[42] In that case, the plaintiff who was able to procure the capital had made a claim for his commission. The defendant denied that the plaintiff had performed any service and no claim could be made against them.

[43] This court, with respect, wishes to state that this court will not and will never decide a case out of fear or be influenced with any appearance or perception of the public that the courts condone or even encourage agreements which are alleged to be opposed to public policy. If that is the approach, with respect, that the court have to take into considerations in deciding a case, then the decision will be questionable and would raise doubt whether appearance or perception of the public would become one of the consideration or a factor in arriving at judicial decisions. Be it, even in a case, where the defence has pleaded or alleged that the consideration in the contract or transaction is opposed to

public policy pursuant to s. 24(e) of the Contracts Act 1950, justice cannot be done according to the whims of the court and in complete disregard to the facts and law. This court would not decide a case to please the public gallery or the public at large as public perception on the court's decision is never a relevant or decisive consideration in arriving at a judicial decision with the exception, perhaps, in cases, where an application is made for a judge to recuse himself or herself from hearing or continuing with any proceeding or trial based on alleged bias. (See *Dato' Tan Heng Chew v. Tan Kim Hor & Another Appeal* [2006] 1 CLJ 577, *Dato' Dr. Joseph Eravelly v. Dato' Hilmi Mohd. Nor & Ors* [2011] 3 CLJ 294 at p. 307).

[44] In *Mahendra Gill v. Election Commission* [1978] 1 SCC 447 quoting from the book by Alan Barth (Prophets with Honour) Krishna Iyer SCJ set out the following passage (with approval).

> A court which yields to the popular will thereby licenses itself to practice despotism for there can be no assurance that it will not on another occasion indulge its own will. Courts can fulfil their responsibility in a democratic society only to the extent they succeed in shaping their judgments by rational standards, and rational standards are both impersonal and communicable.
>
> I know that the public policy is an unruly horse but it is for an able and competent judge to ride that unruly horse and to bring it down on the side of justice (per Lord Denning).

[45] As far as this court is concerned, so long as the presiding judge or the judicial officer has no material or commercial interest in the outcome of the proceedings or a trial pending before the court, in the sense, he must be 'completely detached, judicial, impartial and independent', and there is no reason which would affect the impartiality of his or her decision, there should be no reason to be concerned what will be the perception of the public in the decision of the court. The decision of the court should never and ever be influenced by any extraneous consideration, such as political, corporate, commercial patronage or private interest. It is essential and important to be mindful that courts reputation for honesty and impartially to the judicial oath and the sacred seat of justice must be maintained at all times in the discharge of its judicial duty. (See *Osborne v. Bank of the United States*, 9 wheat 738-866).

[46] In any event, the facts and surrounding circumstances and the nature of the contract and the transaction in the cases aforesaid are easily distinguishable from the present case which does not justify the plaintiff's claim to be struck down as opposed to public policy. (See also *Charles Ooi Kiah Inn & Anor v. Kukuh Maju Industries Sdn Bhd* [1993] 3 CLJ 199). In this respect, it is appropriate, to be reminded of the observation of H.T Ong FJ in the case of *Sundralingam v. Ramanathan Chettiar* [1967] 1 LNS 173; [1967] 2 MLJ 211 HT Ong FJ said at p 213:

> Each court, of course, is bound by the decisions of courts above it, but "individual judges are not bound by each other's decisions, although judicial courtesy naturally requires that they do not lightly dissent from the considered opinions of their brethren": see *Law in the Making* (6th Ed.) p. 231. I do not think I can usefully add anything to what Sir Carleton Allen said, except to point out that, within the past decade and even the last lustrum, judges in Malaya have, on several occasions respectfully agreed to differ, as may be seen from the reports in The Malayan Law Journal.

[47] In the present case, the plaintiff's case is that he was originally promised 16.66% shares in Merong Mahawangsa Sdn. Bhd, the first defendant, which is equivalent to 10% share in the Consortium. Nevertheless, the second defendant was not able to accept the plaintiff in Merong Mahawangsa Sdn Bhd, as there were several VVIP's who will be the shareholders and directors and that the plaintiff's participation will complicate the matter. Therefore, the second defendant had suggested the payment of RM20,000,000 as the consideration for the services he had rendered. Hence, the plaintiff was instead promised and the defendants had agreed to pay him the said sum of RM20,000,000 which he had agreed to accept as contained in the said Letter of Undertaking.

[48] As for the plaintiff's evidence in the present case, the plaintiff has explained how the said Letter of Undertaking was prepared and handed to him and the chronology of the events as to how his services were sought and rendered by him to the second defendant. The plaintiff has also testified *inter alia* as contained in the witness statement (exh. P4) as follows:

A

Q4: Why did the second Defendant look for you?

A4: *The second defendant knew of my acquaintance with the inner circle of the Government of Malaysia and abroad,* so he approached me to assist him in his venture in February 1998 (emphasis added).

B

Q5: What was the second defendant contention?

A5: He therefore *wanted me to help him to use my good relationship with and contacts in the Government of Malaysia* to increase his stake in that consortium from 20% to 60% (emphasis added).

C

Q15: Did you go to see Dato' Seri Anwar Ibrahim and hand over the letter to him?

A15: Yes, I met Dato' Seri Anwar Ibrahim on 3 March 1998 and handed him the letter and briefed him regarding the bridge proposal and convinced him that 2nd Defendant should be given an increased equity of 60% in the consortium, justified by the availability of the fund through the letter of Charles E Jay. I further requested his permission to bring the second Defendant to see him the following day.

D

E

Q16: Did you and the 2nd Defendant meet Dato' Seri Anwar Ibrahim the following day?

F

A16: Yes. The next day. I brought the 2nd Defendant to the official residence of Dato' Seri Anwar Ibrahim. The 2nd Defendant and I briefed Dato' Seri Anwar Ibrahim about the Project and we personally requested that the second Defendant's company IBEX be awarded 60% share equity in the consortium that would be awarded the Project.

G

Q21: Who else did you seek help from?

A21: I seek help from the late Dato' Megat Junid Ayob, who was then the Deputy Minister of Home Affairs, Malaysia.

H

Q22: How were you acquainted to the late Dato' Seri Megat Junid Megat Ayob?

A22: He was my family friend. My father in law and him were teachers at Sekolah Sultan Abdul Halim, Jenan, Jitra, Kedah. His eldest son Dato' Megat Fairus was the business partner of my wife. I frequently visited him at his house and office.

I

Q23: Did Dato' Seri Megat Junid Megat Ayob assist you? A

A23: Yes. Sometime in late February 1998, I met him personally and briefed him about the Johor-Singapore bridge project and also informed him about my arrangement with the Funder in USA.

B

I requested his assistance to discuss with EPU to help me and the 2nd Defendant to increase our share in the consortium from 20% to 60%. He said he would help and he did.

Q24: Did you and the second defendant write to EPU as advised Dato' Seri Anwar? C

A24: Yes, we did.

Q38: How did you know about the EPU letter dated 25.6.1998?

D

A38: I was called by Dato' Seri Megat Junid to his office and he personally gave me a copy of the said EPU letter and also told me that the second defendant had also received a copy of that letter.

[49] Based on the totality of the evidence, this court is unable E to accept the defendants' defence that the consideration or object of the services rendered by the plaintiff is opposed to public policy for the sake of denying liability, for the following reasons:

i. Merely having close relationship or contact with Government F leaders and having had assisted the second defendant to procure the original bridge project through the plaintiff's influence, is not *per se* opposed to public policy unless the consideration and object is inimical or tainted with any illegality as envisaged by s. 24(e) of the Contracts Act 1950. G There is no evidence to support such an interference.

ii. The entire services that was rendered by the plaintiff to the second defendant was carried out in a transparent fashion where the second defendant was taken by the plaintiff to H meet the then Minister of Finance on 3 March 1998. Subsequently, the second defendant had followed up with several correspondences exchanged between the Government authorities and the second defendant through his company IBEX and the said documents are produced and tendered as I evidence.

iii. There was nothing inimical or tainted with any illegal object or the consideration as contained in the said Letter of Undertaking. The object of the plaintiff in providing the services is not illegal or opposed to public policy although it may on the face of it appear to be lacking in transparency where the original bridge project was not put up for open tender.

iv. However, the correspondence including the surrounding circumstances between the second defendant and the relevant government authorities has rebutted the allegation that the consideration or object contained in the said Letter of Undertaking is opposed to public policy.

v. There is absolutely no challenge or any suggestion put to the plaintiff during cross examination that the consideration, being the agreed remuneration of RM20,000,000 is tainted with any illegal motive or is inimical or has any tendency to corrupt or influence the Government authorities or is injurious to good Government or it has disregarded any other deserving applicant or there was insistence to approve the award for the original bridge project to the second defendant or his company against any other potential applicants. Neither is there any evidence produced as to how the plaintiff's services and the said consideration is injurious to the public welfare or interest apart from a bare assertion. (See *Datuk Ong Kee Hui v. Sinyium Mutit* [1982] CLJ 539; [1982] CLJ (Rep) 87, *Engku Leh v. Che Wok* [1948] 1 LNS 113).

vi. The defendants cannot just plead in their defence that the agreed consideration of RM20,000,000 is opposed to public policy and not raise it during cross examination of the plaintiff by suggesting to the plaintiff that the services rendered by the plaintiff is opposed to public policy, and the reasons for the accusation should also be put to the plaintiff that what he had practiced is opposed to public policy as envisaged by s. 24(e) of the Contracts Act 1950. (See *Nahar Singh Mitt Singh v. Pang Hon Chin* [1983] 1 CLJ 310; [1983] CLJ (Rep) 657 at p. 660, *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639 at pp. 658-659 and *Teo Hock Guan & Anor v. Johore Builders & Investments Sdn Bhd* [1996] 4 CLJ 184 at pp 191-192).

vii. Admittedly, the second defendant was taken to meet the then Minister of Finance, Dato Seri Anwar Ibrahim on 3 March 1998 for his assistance in respect of the original bridge project. The then Minister of Finance when approached by the plaintiff and the second defendant had rightfully referred them to the Unit Perancang Ekonomi Jabatan Perdana Menteri (EPU). Thereafter, the second defendant had continued to exchange and had entered into several correspondence on behalf of IBEX with the relevant government authorities when the letter dated 25 June 1998 (exh. P26) from the Director General of Unit Perancangan Ekonomi Jabatan Perdana Menteri (EPU) was sent to him.

viii. The fact that the then Deputy Minister of Home Affairs had called the plaintiff to hand over a copy of the said Letter dated 15 June 1998 (exh. P26) did not make any difference in order to find that the handing over of the copy of the said letter (exh. P26) and considered together with the other evidence, is in any way or even bordering any illegality as opposed to public policy.

ix. The defendants' defence on the issue of public policy and illegality and that the award of the GSB project has no connection with the plaintiff's effort and services is a new invention and an afterthought defence which obviously has been raised to deny the plaintiff's entitlement, being the agreed remuneration of RM20,000,000 for the services he had rendered as contained in the said Letter of Undertaking.

x. As to the case of *Chase Perdana v. Md Afandi Hamdan* [2009] 6 CLJ 501, the decision of the Federal Court is binding on this court and must faithfully be applied. However, the facts in that case are easily distinguishable. In that case:

(i) plaintiff did not fulfil a condition precedent stipulated in the contract of sale dated 26 June 1997. One of the terms of the said contract which is an issue was to obtain the approval of the Foreign Investment Committee (FIC) and the Ministry of Finance (MOF) under the Securities Industry Act 1983 (presently known as the Capital Market Services 2007). The defendant had agreed to pay RM5 million to the plaintiff for the transfer of 240 shares in the company Jernih Karya Sdn Bhd and one other share owned by Magrigal Gumba in Jernih Kaya Sdn Bhd upon the approval of the MOF and the FIC is obtained.

(ii) On 28 June 1997, the defendant paid to the plaintiff the sum of RM1 million as deposit mentioned in the Letter of Undertaking. The plaintiff acknowledged the receipt of the RM1 million and once again included the agreement in the Letter of Undertaking to refund the said sum of RM1 million, in the event the approval by the FIC and any other relevant authorities are not obtained. As the approval of MOF was not obtained, the plaintiff then requested the defendant to refund the said deposit sum of RM1 million. The defendant had refused to return the sum of RM1 million.

(iii) The plaintiff filed an action in the High Court at Kota Kinabalu, for recovery of the said sum of RM1 million. The plaintiff's claim was dismissed. However the defendant's counter claim for the balance sum of RM4 million was allowed. The plaintiff's appeal to the Court of Appeal was dismissed. The plaintiff then appealed to the Federal Court after having obtained leave to appeal.

(iv) In allowing the plaintiff's appeal, the Federal Court, *inter alia* held, that the Letter of Undertaking and the sale and purchase agreement had expressly stipulated that the said approvals must be obtained and that if the conditions were not complied with, the Letter of Undertaking could not be enforced. The fulfilment of the condition precedent in a contract of sale is binding upon the parties and the MOF's approval was required under the Securities Industry Act 1983 (presently known as Capital Market Services Act 2007). In other words, the Federal Court held that parties to an agreement cannot waive the statutory requirements.

(v) In that case there was a breach of the term of the statute. The Federal Court held that parties are bound by the terms of the agreement and the Letter of Undertaking.

xi. In the present case, the Director General of the Unit Perancang Ekonomi Jabatan Perdana Menteri (EPU) at p. 2 of the letter dated 25 June 1998 (exh. P26) had in fact rejected the second defendant's request to include "cornice" in the privatization and had informed him that he could apply for the same later. Surely, the Government Authorities who had earlier considered the second defendant's application for the original bridge project or for the increase in equity in IBEX were not pressurised or directed or ordered to decide in a particular way or in the second defendant's favour or against any other applicants and there is also absolutely no such evidence.

xii. There is also no evidence or materials of any improper exercise in the making of the decision to increase the equity in IBEX from 20% to 60% and the award in principle of the original bridge project as contained in the said letter dated 25 June 1998. The consideration or object is not tainted with illegality by reason of public policy and neither has it been established it is economically against public interest. (See *Thong Foo Ching v. Shigenori Ono* [1998] 4 CLJ 674, *The Aspinall Curzon Ltd v. Khoo Teng Hock* [1991] 1 LNS 6, *Kidurong Land Sdn Bhd & Anor v. Lim Gaik Hua & Ors* [1990] 1 CLJ 687; [1990] 1 CLJ (Rep) 141, *Re Mahmood and Ispahan* [1921] 2 KB 716).

[50] This court will not reject the plaintiff's claim based merely on a bare assertion that, first, the consideration or object of the said Letters of Undertaking is opposed to public policy and secondly, the GSB project was awarded to the defendants solely on its own merits and not due to the effort and services provided by the plaintiff as the allegations are against the weight of the evidence. The plaintiff had carried out his obligations as required of him which was not through any illegal means or object or tainted with any unlawful motive or has harmful tendencies to the public welfare. The plaintiff had rendered his services to the second defendant as agreed. He is therefore, entitled to claim the agreed remuneration being RM20,000,000, based on the freedom of contract and subject to the terms of the said Letter of Undertaking, and he has not violated any law in this jurisdiction. As stated, the plaintiff's claim is subject to the other terms as contained in the said Letter of Undertaking which will be dealt with in the later part of this judgment.

[51] In the present case, on the facts and surrounding circumstances, this court finds that the consideration is for services genuinely rendered by the plaintiff and is not illegal. There is no evidence of any abuse of 'influence' or was the Minister persuaded by any unlawful influence of the plaintiff to do anything which was injurious to the public welfare or interest or any evidence or suggestion to the effect that the introduction of the second defendant to the then Minister of Finance was an improper attempt to sabotage any ongoing tender exercise being conducted by the relevant authorities at the material time of the privatization of the original bridge project. In other words, there is not a single element or an *iota* of evidence of the plaintiff peddling

influence or involvement in any act of any corruption or corrupt practice conducted by the plaintiff in the form of payment or provision of benefits to the persons in authority, or payment of money to a political party or to any individual. There is also no evidence or suggestion of any payment or any form of benefit which was offered to any government official or to the Minister whom the second defendant was introduced. Neither was the second defendant introduced by the plaintiff as a preferred applicant amongst the other applicants for the original bridge project or the value of the contract price had been inflated so as to benefit any particular person or group. There is no evidence or suggestion that the plaintiff had dealings with the government leaders previously in relation to any other matters or he was being used as an intermediary to tout for potential applicants for any government contracts.

[52] As stated above, this court cannot strike down the plaintiff's claim merely based on a bare assertion that the said Letter of Undertaking is opposed to public policy without any sufficient materials or compelling evidence before the court. This court finds that the consideration or the object of the Letter of Undertaking or the plaintiff's services is not *per se* opposed to public policy. Merely pleading and submitting at the close of defendant's case that the consideration sum of RM20,000,000 for the services rendered by the plaintiff is opposed to public policy because the plaintiff has close relationship with certain government leaders or politicians at the material time, is not sufficient for this court to regard the same as opposed to public policy unless there are other compelling facts or circumstances to suggest or support such allegation of illegality. In certain circumstances or cases, procuring Government contracts' through friendship may also provide a temptation for a decision maker not to hold the scales of fairness and transparency clear and even. However, in the present case, there is insufficient facts to justify for this court to draw any such inferences, more so, the plaintiff took the defendant, introduced him and the subsequent dealings were through correspondence addressed to the defendant company, not to the plaintiff, otherwise this court would be drawing inferences based on speculation and conjecture. In order for this court to regard or draw an inference that the plaintiff's role is opposed to public policy, there must be sufficient facts produced by the party who

claims or asserts that the services rendered by the plaintiff or the consideration stipulated is regarded as opposed to public policy, otherwise as stated above, the court will be left with conjecture or speculation.

[53] In *Jones v. Great Western Railway Company* [1930] AC 152 Lord McMilllan said at p. 202:

> An inference in the legal sense is a deduction from the evidence and if it is a reasonable deduction, it may have the validity of proof.

[54] In *Caswell v. Powell Duffryn Associates Collieries Ltd* [1940] AC 152 at pp. 186-170, Lord Reid said:

> Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had actually been observed. In other cases the inference does not go beyond reasonable probability but if there are no positive proved facts from which the inference can be made the method of inference fails and what is left is mere speculation or conjecture.

[55] In *Maharashtra State Board of Secondary & Higher Secondary Education v. Gandhi & Ors* [1991] 2 SCC 716 at p 748, the Supreme Court said:

> inference from the evidence and circumstances must be carefully distinguished from conjecture or speculation. The mind is prone to take pleasure to adopt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence, direct or circumstantial, to deduce necessary inference in proof of the facts in issue. There can be no inference unless there are objective facts directs or circumstantial from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred as much as practical as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive true facts, oral, documentary or circumstantial from which the inference can be made, the inference fails and what is left is mere speculation or conjecture.

[56] As stated, there is no such evidence which had been introduced through cross-examination of the plaintiff for the court to draw any inference that the services rendered by the plaintiff

A 'smacks or smells' of illegality or any set of facts that seem to support such a suggestion as tainted with illegality. (See *Thong Foo Ching & Ors v. Shigenori Ono* [1998] 4 CLJ 674). Public policy consideration should not be extended to include cases not reasonably within the purview of s. 24(e) of the Contracts Act
B 1950. This court must be prepared to interpret the law by examining and evaluating the facts and the surrounding circumstances within the purview of s. 24(e) of the said Act, in order to consider whether the object or consideration from the plaintiff's conduct in certain circumstance is opposed to public
C policy as envisaged by s. 24(e) of the said Act. This court cannot permit a 'strained and sinister interpretation' which is essentially unjust when the evidence did not support any illegality in the consideration or on the part of the plaintiff.

D **[57]** In any event, awarding projects, in particular, projects which attract large contract sums or consideration and if it truly intended for public purposes, it must no doubt be carried out through open tenders and should not be through private arrangement or meetings or by lobbying or using the influence of certain ministers
E or government officials and/or political leaders for personal gains and benefit. There must no doubt be valuable checks and balances on both the exercise of formal and informal decision when awarding government projects to ensure with certainty that there is real transparency and no impropriety and to encourage public
F confidence in the administration process. However, if it is established there is impropriety or the plaintiff's conduct smacks of peddling influence to benefit certain individual or class of people, this court will not hesitate to strike down the contract as opposed to public policy. Nevertheless, the practice of awarding contracts
G or projects to selected corporation or individuals by the Government Authorities without calling for open tenders may arguably be regarded as being irregular and not transparent and by such implication it may arguably warrant an inference that there was a private arrangement or negotiation which may not be in the
H interest of the public and may attract the defence as being opposed to public policy as envisaged by s. 24(e) of the said Act.

[58] It is important to consider and distinguish the case in *Harrington v. The Victoria Graving Dock Company* [1878] QBD (Vol. III) 549.
I

(1) In that case, the plaintiff filed an action for the balance of moneys alleged to be payable by the defendants to him under an agreement, by which the defendants' undertook to pay the plaintiff a commission of 5 percent, for superintending repairs to two ships executed by the defendants for the Great Eastern Railway Company. A B

(2) The defendants repudiated liability. The defendants alleged that the commission so agreed to be paid, upon an understanding that the plaintiff should use his influence with the railway company to obtain the acceptance by the company of the defendants' tender for the repairs and that the agreement was void as being made on a corrupt consideration. C

(3) The plaintiff at the time when he entered into a contract with the defendant was employed by Great Eastern Railway Company as an engineer to advise the Railway Company as to the repairs on certain ships belonging to the company. The defendants had contracted to pay the plaintiff a commission for superintending repairs to be executed by them on the ships and partly in consideration of a promise that the plaintiff would use his influence with the railway company to induce them to accept the defendants' tender for the repair of the ships. D E

(4) At the trial, the Jury found, *inter alia*, in answer to questions put to them by Field J that: F

> the plaintiff, at the time the arrangement was made, was in position of trust and confidence in relation to the railway company in reference in the tender for the repairs of the ships, and that the agreement was calculated to bias the plaintiff's mind so that he should not give his full, free, and unfettered advice to the railway company. However, the Jury found that the agreement did not so bias the plaintiff's mind, and that he did not give advice to the railway company less beneficial than he otherwise would in reference to the said tender. The learned trial judge did not enter judgment on those findings for either party. G H

On appeal, Cockbarn CJ held:

> Our judgment must, in my opinion, be for the defendants. I will assume, for the purposes of argument, that the agreement did not influence the mind of the plaintiff so as to induce him to do anything dishonest towards his employers, the Great Eastern I

> Railway Company. I entertain no doubt, however, that when a bribe is given, or a promise of a bribe is made, to a person in the employ of another by some one who has contracted, or is about to contract, with the employer, with a view to inducing the person employed to act otherwise than with loyalty and fidelity to his employer, the agreement is a corrupt one, and is not enforcible at law, whatever the actual effect produced on the mind of the person bribed may be. The tendency of such an agreement as this must be to bias the mind of the agent or other person employed, and to lead him to act disloyally to his principal. It is intended by the party who promises the bribe to have that effect, and the other party knows such in his intention. Such a bargain is obviously corrupt. It would plainly be in contravention of the maxim, *ex turpi causa non oritur actio*, and most mischievous to hold that a man could come into a court of law to enforce such a bargain on the ground that he was not in fact corrupted. It is quite immaterial that the employer was not in fact damaged. It is sufficient that the consideration upon which the promise was made was intended to be a corrupt one. (See also *Smith v. Sorby* [1878] QBD Vol III 552). (See also *Marshall v. Baltimore & Railroad Company* 16 How, 314, at p. 335-336, *Hazelton v. Sheckels,* 202 U.S. 71 [1906], *Tool Company v. Norris*, 69 U.S 45 [1864], *European Commission v. Luxembong* [2009] All ER (EC) 1049).

[59] However, having had used the plaintiff's influence or contact with Government leaders or politician to procure or assist the second defendant to procure the said project although may be regarded as an irregular exercise, this court cannot be left to speculate or draw any inference that the transaction is tainted or infected with illegality unless there are sufficient facts to regard the arrangement as unlawful or void in law. In the present case, as stated, this court is unable to find sufficient facts to regard the services rendered by the plaintiff and the payment of the agreed remuneration of RM20,000,000 as being opposed to public policy or it has injured the public or is economically against the public interest. On the other hand, although the said Letter of Undertaking and the plaintiff's role in the project is much to be desired and not encouraged, it should not cloud or influence this court from arriving at a just decision which must necessarily be based on admissible evidence, both oral and documentation and the surrounding circumstances and in accordance to the doctrine of judicial precedent.

> The principle of *stare decisis* requires more than lip service (per Chang Min Tat FJ in *PP v. Datuk Tan Cheng Swee & Anor* [1980] 2 MLJ 276 at p.278. It has been said time and time again that one of the important functions of the doctrine of *"stare decisis"* 'is to maintain at the maximum the feeling and appearance of certainty and stability and to cherish the value of certainty of the laws'.

[60] This court is not bound to follow the interpretation given to s. 24(e) of the Contracts Act 1950 in other jurisdictions or common law countries. This court is bound by the doctrine of judicial precedent enunciated by the courts in our jurisdiction in reference to s. 24(e) of the Contracts Act 1950. It is also important to stress that violation of public policy cannot be applied and considered in the same fashion as applied in other common law countries. Consideration or object which has been regarded as opposed to public policy and applied in other common law countries may not necessarily be accepted and applied in this jurisdiction. Circumstances and matters which may be opposed to public policy in this jurisdiction, may also not be accepted and applied in other common law countries. In some countries, giving a gift during festive occasions or weddings is regarded as part of 'local culture'. Arguably, giving of gifts during those occasions should not be considered with bribery or corruption depending on the relationship between the giver and the person who accepts the same, although there have been strong criticism from academic writers on this area of law which is debatable or open for arguments.

[61] On the facts and surrounding circumstances, this court is of the considered view that it would be wholly inappropriate to make adverse findings of any misconduct against the plaintiff or the relevant Government Authorities without any evidence to support such a finding. The plaintiff cannot be drawn or implicated into a deal which was in no way tainted by corrupt payment nor was any suggestion put to the plaintiff during cross-examination of any corrupt relationship between the plaintiff and any Government officials or the Ministers referred to in view of his close relationship with the government leaders. This court finds that the said Letter of Undertaking is a binding contract, is lawful and not opposed to public policy.

A Jessel M.R in the case of *Printing & Nominal Registry Company v. Sampson* [1875] 19 Equity Cases, p. 462 said "It must not be forgotten that you are not to extent arbitrarily those rules which say that a given contract is void as against public policy, because if there is one thing which more than another public policy
B requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice. Therefore you have this paramount public policy to consider – that you are not likely to interfere with this freedom of contract." (See also s. 10
C of the Contracts Act 1950).

[62] In the present case, the object of building the bridge between Malaysia and Singapore to replace the causeway must necessarily be for the good of the people and should not be
D merely to confer benefits or gain to certain class or group of people who have the knack of having connection with high level politicians, Government agencies or Government leaders and consequently inflict burden on the public or affect the public purse. However, each case should be decided on a case to case
E basis and according to its own set of factual background and surrounding circumstances before the court. It would be inappropriate if not impossible, to exhaustively set forth those circumstances or situation or to give an exhaustive classification of the cases which is opposed to public policy and applicable in this
F jurisdiction. This court must also be cautious not to overstretch its judicial powers by inventing policies which does not fit the existing "pigeon holes" or increase the number of "pigeon holes". This court should not generalise every act, dealing or friendship acquired over the years with top government leaders as having a
G tendency to influence or peddle influence for them to award government projects, 'Judicial power is never exercised for the purpose of giving effect to the will of the Judge; always and must be for the purpose of giving effect to the will of the legislature'.

H **[63]** This court is of the considered view that the transaction or the contract entered into between the plaintiff and the second defendant, or the letter of undertaking, is not *ex facie* or *per se* unlawful. In other words, the defendants have failed to produce sufficient evidence to constitute the contract or the said letter of
I undertaking or the consideration as unlawful and opposed to public policy. It is regrettable that the defendants who have raised the issue of illegality as being opposed to public policy had failed

to assist this court by producing sufficient evidence to support the contention that the contract between the plaintiff and the defendants, or the said letter of undertaking is opposed to public policy. This court also wishes to reiterate that the perception of the public in the fashion in which this project was awarded to the defendants in principle although it may arguable affect the integrity of the relevant authorities, it does not necessarily mean, it is automatically opposed to public policy on the bare assertion. It cannot be denied that the Government's integrity require *inter alia*, accountability, equality and transparency but in the present case, there is insufficient evidence of bribery risk.

[64] Be that as it may, this court will always faithfully apply the law, upon proper evaluation of the facts and surrounding circumstances judiciously. This court will not allow any personal preferences or act on its predilection or prejudice or public perception to influence the court's judicial performance or decision. This court will also not act as policy making body or attempt to please or ease the perception of the public or the public gallery but will perform its duty as a judicial body whose function is to interpret and not legislate or introduce more "pigeon holes" according to its whim, or extend the purview of s. 24(e) of the said Act. This court is of the considered view that the proper function of this court on the issue of public policy should be to expound and not to expand as it concerns the freedom of contract provided the agreement does not violate any express term of the statute.

> The function of this court is to sit, to hear and to determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large. The object of this court is to find out the truth, and to do justice according to law by holding the balance between the contending parties without the court taking part in their disputations. (See *Jones v. National Colboard* [1957] 2 QB 55).

[65] On the facts and the surrounding circumstances, this court finds that:

i. the payment of the agreed remuneration, being RM20,000,000 to the plaintiff as provided by the said Letter of Undertaking for the services rendered by the plaintiff to procure the original bridge project through his influence in seeking the assistance of the then Minister of Finance and the then Deputy Minister

A of Home Affairs is not necessarily opposed to public policy as envisaged by s. 24(e) of the Contracts Act 1950. The plaintiff is entitled to claim the said agreed remuneration but it is must be subject to the other terms as contained in said Letter of Undertaking.

B

ii. There is no evidence of any corrupt or bribery transaction or the object is tainted with corruption or flavoured with corruption or illegality.

iii. Mere allegation of illegality of the plaintiff's services or that he C has indulged himself with the object of committing illegality is a serious charge. In present case, the accusation may implicate parties who are not before this court to defend themselves and any such accusation will certainly violate the principles of natural justice against parties who are not given the D opportunity to be heard and defend.

[66] In the present case, the said Letter of Undertaking was freely consented by the plaintiff and the defendants who are both competent to contract and the consideration is lawful and it was E made with a lawful object and is not void or prohibited by statute. Section 24(e) of the Contracts Act 1950 has clearly expressed and saves the contract as lawful and only if the court regard the consideration or object as illegal, as being opposed to public policy, the contract will not be enforced. In other words, until the court F regard the consideration or object as unlawful and void, the presumption must necessarily be that the consideration or the object is lawful and the contract is enforceable unless and until it is rebutted. (Section 10 of the Contracts Act 1950, *Foo Say Lee v. Ooi Heng Wai* [1968] 1 LNS 38). In short, generally contracts G are lawful and valid until the court regard the contract as unlawful by reason of express terms in s. 24 of the Contracts Act 1950. (See *Coramas Sdn Bhd v. Rakyat First Merchant Bankers Bhd & Anor* [1994] 2 CLJ 143 at pp. 147-148).

H **[67]** The defendants have taken pains to show that the bridge in both the projects were very different as shown in the comparison table in para. 12 of their outline submissions (encl. 105). The defendants' contention that the award given to Gerbang Perdana Sdn Bhd for the construction of the said GSB project on a I turnkey basis is not the same project as the original bridge project for which the plaintiff had rendered his services cannot be accepted by this court. This court finds that the original bridge

project which was to be constructed under the SIG project on privatisation basis (exh. P26) has nexus to the said GSB project on a design and built turnkey basis (exh. D27) and the parties in both the projects for which the services was rendered by the plaintiff are closely connected to each other project. In fact, there is every reason for assimilating the casual link between the SIG project and the GSB project and is a reasonable reliance and inherent in reliance. (See *Freeman v. Cooke* [1848] 2 Ex 654 at p. 681, *Standard Chartered Bank Aust. Ltd v. Bank of China* [1991] 23 NSWLR 164, *Amalgamated Investments and Property Co. Ltd v. Texas Commerce International Bank Ltd* [1982] QB 84).

[68] The plaintiff cannot be denied the rights and benefits of a bargain entered into by the parties as contracted in the said Letter of Undertaking. The doctrine of *estoppel* is applied to prevent a litigant from asserting that there was no valid and binding contract between him and his opponent. (See *Boustead Trading (1985) Sdn Bhd v. Arab Malaysian Merchant Bank Berhad* [1995] 4 CLJ 283, *Alfred Templeton & Ors v. Low Yat Holdings Sdn Bhd & Anor* [1989] 2 MLJ 202 at p. 244, *Waltons Stores (Interstate) Ltd v. Maher* [1988] 164 CLR 387, *Amalgamated Investment and Property Co. Ltd (In liquidation) v. Texas Commerce International Bank Ltd* [1982] 1 QB 84, 1981, *American Surety Co, New York v. Colgary Milling Co. Ltd* [1919] 48 DLR 295, *De Tehihatchef v. Salerni Coopling Ltd* [1932] 1 Ch 330, *Taylors Fashions Ltd v. Liverpool Victoria Friendly Society* [1981] 1 All ER 897, [1981] 3 WLR 576, *Commissioner for Religious Affairs; Trengganu & Ors v. Tengku Mariam Tengku Sri Wa Raja & Anor* [1970] 3 LNS 1).

[69] *Estoppel* is not cause of action. It may (if established) assist a plaintiff in enforcing a cause of action by preventing a defendant from denying the existence of some fact essential to establish the cause of action or (to put in another way) by preventing a defendant from asserting the existence of which would destroy the cause of action. (per Lord Russel of Killowen in *Dowson Bank v. Nippon Menkwekabashiki Kaisha* LR 62 1A 100 at p. 88, *Attorney General of Hong Kong and Another v. Humphreys Estate (Queen's Garden) Ltd* [1987] 1 AC 114 at p. 123, *Taylors Fashions Ltd v. Liverpool Victoria Trestees Co. Ltd* [1982] QB 133, *Waltons store (Interstate) Ltd v. Maher And Another* [1987-1988] 164 CLR 387 at p. 404).

[70] This court finds that the plaintiff's services included the assistance rendered to the second defendant to increase the equity in IBEX Corporation Amalgamated Sdn Bhd from 20% to 60% as reflected in the Letter dated 25 June 1998 from the Unit Perancangan Ekonomi Jabatan Perdana Menteri (EPU) (exh. P26) which reads as follows:

Unit Perancang Ekonomi,

(Economic Planning Unit)
Jabatan Perdana Menteri,
(Prime Minister's Department)
Jalan Dato' Onn,
50502 Kuala Lumpur

Tel No: 2301459

Telex No: EPUPM MA 30098

Dato' Seri Abul Hassan bin Sulaiman
Ketua Pengarah
(Director General)

Telefax No: 6 03 2914268
No: 6 03 2923115

Ruj. Kami: ( ) dlm. UPE SULIT 11/126/100/148 J.42

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25 Jun 1998

Y.Bhg. Dato' Yahya A. Jalil
Pengerusi Eksekutif
IBEX Corporation Amalgamated Sdn Bhd
3 Jalan 222
46100 Petaling Jaya

Y.Bhg. Dato',

Cadangan Pembinaan Jambatan Menggantikan Tambak Johor Secara Penswastaan

Dengan segala hormatnya saya merujuk kepada Permohonan Y.Bhg. Dato melalui surat bertarikh 21 Mei 1998 mengenai perkara di atas dan sukacita dimaklumkan bahawa YAB Perdana Menteri telah bersetuju ke atas perkara-perkara berikut:

1. Supaya consortium yang akan mengambil alih penswastaan pembinaan jambatan bagi menggantikan Tambak Johor ini dianggotai oleh pihak-pihak seperti berikut:

	Peratus (%)
(i) IBEX Corporation Amalgamated Sdn Bhd (melalui anak syarikat milik penuhnya iaitu Merong Mahawangsa Sdn Bhd)	60
(ii) Transwater Corporation (khusus untuk waris-waris Allahyarham Y.Bhg. Dato' Wan Adli)	20
(iii) Diversified Resources Berhad (DRB)	20
Jumlah	100

2. Permohonan pihak IBEX Corporation Amalgamated Sdn Bhd (IBEX) untuk memasukkan komponen lebuh raya "Corniche" dalam penswastaan Tambak Johor tidak boleh dipertimbangkan. Walau bagaimanapun, IBEX boleh mengambil bahagian dalam tawaran terhad bagi penswastaan projek lebuh raya "Corniche" ini kelak (emphasis added).

Sekian, terima kasih.

Sgd

(Tan Sri Dato' Seri Ali Abul Hassan bin Sulaiman)

s.k

Ketua Setiausaha,
Kementerian Kewangan
Blok 11, Kompleks Pejabat Kerajaan
Jalan Duta
50592 Kuala Lumpur

Ketua Setiausaha
Kementerian Kerja Raya
Kompleks Kerja Raya
Jalan Sultan Salahuddin
50580 Kuala Lumpur

Ketua Setiausaha
Kementerian Luar Negeri
Wisma Putra
50580 Kuala Lumpur

Pengarah Urusan
Detik Nagasari Sdn Bhd
Level 35, Menara Shahzan Insas
No. 30, Jalan Sultan Ismail
50250 Kuala Lumpur

Pengerusi
Diversified Resources Berhad
Suite 4-4B, Wisma HICOM
No. 2, Jalan Usahawan U1/18, Seksyen U1
50150 Shah Alam

[71] The plaintiff's evidence (PW3), his witness (PW1) and the second defendant (DW3's) testimony when considered cumulatively with the contemporaneous documents, which include the entire correspondence between the second defendant and the government authorities support the plaintiff's claim that he had in fact rendered services required of him to the second defendant which has a nexus and an inherent causative link to the GSB project awarded to Merong Mahawangsa Sdn. Bhd, the first defendant by the Government of Malaysia in the year 2003 (see exh. P18).

[72] This court finds:

i. the plaintiff was instrumental from the beginning when the proposal for the construction of the original bridge project was awarded in principle through the letter dated 25 June 1998 (exh. P26) as a result of the plaintiff's services which he had rendered to the second defendant.

ii. The construction of the project known as the GSB project on a "Design & Built or Turnkey basis" which had subsequently surfaced as the crooked bridge was as a result of plaintiff's effort and services which he had rendered to the second defendant from the beginning and has a casual link arising from the original bridge project.

iii. the award to Gerbang Perdana Sdn Bhd by the Government of Malaysia in the year of 2003 (exh. P18) (although it was later known as the "crooked bridge" project) and contains different set of terms and conditions) has nexus and a causative link to the services provided by the plaintiff in respect of the original bridge project which did not proceed but later resurfaced in the year 2003 and converted to GSB project.

iv. The services provided by the plaintiff from the beginning has a casual link to the GSB Project (crooked bridge project) which was awarded to Gerbang Perdana Sdn Bhd. However, it is to be noted that at the time when the writ of summons was filed on 7 January 2002, the GSB project was not awarded as yet. The GSB project was awarded to Gerbang Perdana Sdn Bhd through the letter dated 1 August 2003 (exh. P18).

[73] This court finds and it is not in disputed that:

i. the award which was agreed in principle by the Government of Malaysia was a privatisation project for the original bridge project and was made known through the letter dated 25 June 1998 (exh. P26) which was obtained through the plaintiff's assistance, influence and services rendered.

ii. By the letter dated 25 June 1998 from the Unit Perancangan Ekonomi (EPU) (exh. P26), equity share was in fact increased from 20% to 60% held by Gerbang Perdana Sdn Bhd and which remained the same and is being held by Merong Mahawangsa Sdn Bhd.

iii. The 60% share which was approved in favour of IBEX as per letter dated 25 June 1998 was obtained through the services rendered by the plaintiff.

iv. the original bridge project did not materialise as there was no agreement reached between the Government of Malaysia and the Government of Singapore.

v. The GSB project was terminated by the Government of Malaysia (exh. D29).

Relationship Between The First And Second Defendant

[74] As to the contractual relationship between the first defendant and the second defendant, this court finds that the contemporaneous documents clearly show that the second defendant had signed the said Letter of Undertaking as the Executive Director for and on behalf of the first defendant and also on his own behalf. Therefore, the issue of a separate entity between the first defendant and the second defendant or there is no contractual obligation between them did not arise.

[75] The facts in *Law Kam Loy & Anor v. Boldtex Sdn Bhd & Ors* [2005] 3 CLJ 355 is also be distinguishable and does not fit the facts in the present case:

(i) In that case, the plaintiff's claim was based on the agreed document that was executed by the plaintiffs and the second to the sixth defendants. The first defendant was not a party to the agreed document. The second defendant to the sixth defendants had agreed in principle to transfer all the shares owned and held by the first defendant, ie; Boltex Sdn Bhd in another company Dragonbite Holdings Sdn Bhd and his nominee. The High Court held that there was a concluded agreement between the parties and dismissed plaintiff's claim and the counter claim.

(ii) On appeal, the Court of Appeal affirmed the decision of the High Court and dismissed the appeal. The Court of Appeal *inter alia*, held that the promise or the agreement was not enforceable against the first defendant by reason of the Doctrine of privity of contract. The Court of Appeal in relying on the leading case of *Macaura v. Northern Assurance Co. Ltd & Ors* [1924] AC 616, *inter alia* held that the property owned by the company belongs to it and not to its shareholder. The shareholder has no right to any item or property owned by the company as having not legal or equitable interest therein. A shareholder is only entitled to the profits and a share in the distribution of the surplus assets when the company is wound up. In other words, the Court of Appeal held that the second to the sixth defendants had no rights to contract over the property of a third party. Hence the agreement was not enforceable against the first defendant.

[76] This court finds that the contemporaneous documents clearly show that the second defendant had signed the said Letter of Undertaking dated 3 July 1998 (exh. P14) for the first defendant and on his own behalf. The second defendant is not permitted to now change his position and disclaim liability on his personal capacity as the evidence produced does not support his defence that he is not personally liable for the plaintiff's effort and services. (See *Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor* [1997] 1 CLJ 529 at p. 537, *Jones v. Lipman* [1962] 1 All ER 442).

Entire Agreement Clause

[77] On the other hand, this court is of the considered view that cl.1 of the said Letter of Undertaking must be read and considered together with the rest of the clauses. For easy reference, the said Letter of Undertaking is once again reproduced:

Letter Of Undertaking

To;
Mr. Shazryl Eskay bin Abdullah
I.C. 600216-02-5215
22 Jalan Bruas
Damansara Heights
50490 Kuala Lumpur

WHEREAS the Procuror has at our request agreed to render his services for the purpose of procuring and securing from the Government of Malaysia the award of the project known as "Cadangan Pembinaan Jambatan Menggantikan Tambak Johor secara Penswastaan" (hereinafter referred to as the "Project") in favour of the Consortium called SURIA KALBU SDN BHD of No. 3, Jalan 222, 46000 Petaling Jaya (Company Registration No. 452586-U) (hereinafter called the "Consortium") of which we have a 60% equity participation in the issued share capital.

WHEREAS through the Procuror's services aforesaid the Unit Perancang Ekonomi Jabatan Perdana Menteri by letter dated 22th June 1998 has awarded in principle the project to the consortium (emphasis added).

In consideration of the services aforesaid rendered by the Procuror we Merong Mahawangsa Sdn Bhd (Company Registration No. 463227-X) a company incorporated in Malaysia and having its registered address at No. 3374, Jalan 18/31, Taman Sri Serdang, 43300 Seri Kembangan, Selangor Darul Ehsan *hereby undertakes and agrees to pay you sum of Ringgit Malaysia Twenty Million only (RM20,000,000.00) being the agreed remuneration payable on or before 3rd November, 1998* (emphasis added).

This undertaking shall remain valid so long as the award for the project remains valid and subsisting and *should the award be withdrawn and or terminated for any reasons whatsoever the aforesaid sum of RM20,000,000.00 or any part thereof shall be refunded without interest immediately.* (emphasis added).

A Dated this 3rd day of July 1998

sgd

...
Yahya bin A. Jalil
B Pengarah Eksekutif
Merong Mahawangsa Sdn Bhd

I confirm my agreement to
the Undertaking aforesaid

sgd
C

...
Syazryl Eskay bin Abdullah

[78] In considering the said Letter of Undertaking, the plaintiff
D cannot expect this court to pick and choose the clauses according to his whims and fancy and consider only one aspect or certain clause or clauses in the said Letter of Undertaking which favours him and not the other clauses which does not favour him with regard to the payment as contended by learned lead counsel for
E the plaintiff. The plaintiff is also not permitted to select or choose conditions which has been agreed in the said Letter of Undertaking which suits him or are in his favour and disregard terms and conditions which he had agreed to bind both parties but does not favour him as that position would tantamount to
F taking an inconsistent stand.

[79] The plaintiff obviously must have known what was meant in cl. 4 and the consequence of agreeing to the same as he had freely signed the acceptance of the said Letter of Undertaking. The plaintiff cannot be permitted to discard that clause which he
G has mutually agreed and signed which is self imposed on each other.

[80] Ordinarily, and in almost all contracts, the entire agreement clause must be read in accordance to the legal principles by which
H contractual documents are to be construed.

> the object of the court is to give effect to what the contracting parties intended. To ascertain the intention of the parties the court reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning in the context of the
I agreement, the parties' relationship and all the relevant facts surrounding the transaction so far as known to the parties. To

ascertain the parties' intentions the court does not of course inquire into the parties' subjective states of mind but make an objective judgment based on the materials already identified. (See *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1988] 1 WLR 896, 912-913 and *Bank of Credit and Commerce International SA v. Ali* [2002] 1 AC 251). (See also *Miller v. Karlinski* TLR [1945] Vol. III Ixcii 85).

[81] The said Letter of Undertaking (exh. P14) has been produced as evidence in support of the plaintiff's claim. The plaintiff is therefore not permitted to introduce evidence to vary, or subtract, or retract from its terms which has been agreed between the parties except to admit and accept the document, the said Letter of Undertaking. Based on the terms of the agreement contained in the said Letter of Undertaking, the plaintiff is not permitted to discard that cl. 4 and invite this court to just consider only cl. 2 in isolation as the entire Letter of Undertaking is binding upon both parties. Accordingly, both parties are bound by the terms of the said Letter of Undertaking.

Ex gratia Compensation

[82] As to the *ex gratia* compensation paid to Gerbang Perdana Sdn Bhd (exh. P34), this court is of the considered view that the plaintiff cannot assert his right of claim under the said Letter of Undertaking in the compensation as it is an *ex gratia* payment made to Gerbang Perdana Sdn Bhd for the breach of contract committed by the Government of Malaysia on the GSB project. There is no evidence of any unjust enrichment on the part of the first defendant or the second defendant or Gerbang Perdana Sdn Bhd. In fact the payment of *ex gratia* compensation must necessarily be restitution of the monies expanded and losses suffered due to the sudden termination of the project by the letter dated 12 April 2006 (exh. D29).

[83] *Osborn's Concise Law Dictionary* defines compensation as "a payment to make amends for loss or injury to person or property or as recompensate for some deprivation, eg, compensation to the owner of the compulsory acquisition of his property".

[84] Therefore, the plaintiff is not entitled to any stake or claim on the *ex gratia* compensation paid to Gerbang Perdana Sdn Bhd as the project is not subsisting and has been terminated (exh. D29 and P34). The plaintiff has agreed to abide by the said condition as in cl. 4 of the said Letter of Undertaking and he cannot reject that term.

[85] However, the agreed remuneration is subject to the other terms of the said Letter of Undertaking which the plaintiff has agreed. As stated above, the said Letter of Undertaking must be read as a whole which means, this court must also take into consideration cl. 4 of the said Letter of Undertaking at p. 2 as it is not a severable clause. (See *Man Financial (S) Pte Ltd v. Wong Bark Chuan David* [2008] 1 SLR 663). In other words, cl. 2 should not be taken out of context and read in isolation without considering cl. 4 and without evaluating the facts and surrounding circumstances of the case.

[86] The plaintiff is not entitled to the said remuneration:

First, the original said project did not proceed as no agreement was reached between the Government of Malaysia and the Government of Singapore. Consequently, the award given in principle for the original bridge project (SIG project) did not materialise.

Secondly, if the award on the turnkey basis to Gerbang Perdana Sdn Bhd, GSB project (exh. P18) in the year 2003 has nexus and has a causative link to the plaintiff's services as found by this court, the said GSB project had been called off or terminated due to the change of Government leaders in Malaysia in the year 2006 (exh. D29). Accordingly, the plaintiff is not entitled to the payment of the said sum of RM20,000,000 or to claim any payment in the *ex gratia* compensation paid to Gerbang Perdana Sdn Bhd (exh. P34), the first defendant as stated in cl. 4 of the said Letter of Undertaking.

[87] It is also important to note that the plaintiff had agreed to refund any payment received if the project was not subsisting and the award is withdrawn or terminated for any reason whatsoever. Therefore, it is untenable as contended by learned lead counsel for the plaintiff that cl. 4 should only apply if the award is withdrawn or terminated and not if the project is withdrawn or terminated. Both the award and the project are interrelated or intertwined and must be considered together for the purpose of the services rendered by the plaintiff. The plaintiff's contention that only the project has been withdrawn and not the award itself cannot be sustained on the facts and in law as the award and project are not independent of one another and either do not exist without the support of the other. The project is an integral and inseparable part of the award and inextricably linked.

[88] In the circumstances and for the reason aforesaid, the plaintiff's claim must fail not by reason that it is regarded as opposed to public policy or because the services he had provided previously to the second defendant had no nexus or a causative link to the GSB Project. The plaintiff's claim must fail because the plaintiff had agreed to refund the sum of RM20,000,000 or any part thereof if he had received the said payment or any part thereof on the basis and if the award is withdrawn or terminated which must necessarily include the project itself (for which the award was given) as both the award and the project are interrelated and intertwined and is inseparable. Consequently, and as agreed by the plaintiff as contained in said Letter of Undertaking, this court finds that the plaintiff is not entitled to the payment of RM20,000,000 upon considering the entire agreement clause which must be read in accordance with the principle by which the contractual documents are to be construed. Both the original bridge project (SIG project) and the GSB project are no longer subsisting as the same did not materialise or having been terminated. The plaintiff himself is estopped from denying the defendants to enforce cl. 4 of the said Letter of Undertaking against him.

[89] In the circumstances and in accordance with the rules of reason and justice, the plaintiff's claim is dismissed with costs.